

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
- MINUTES -
MONDAY, DECEMBER 18, 2006
TRURO TOWN HALL, 7 PM**

QUORUM PRESENT: N. Pope (Chmn.); K. Althaus (Clerk); A. Hultin; J. Allee (Alt.); A. Efromson (Alt.).

(Absent: J. Conlon (Vice Chmn); M. Matricardi). S. Kelly, Recording Sec.

Regular Meeting called to order at 7:15 P.M. by Chairman Pope, who entered into the record the fact that for the applicable hearings scheduled for this meeting, the list of abutters to be notified had been verified by the Assessors, and all the abutters listed were duly notified in writing. In addition, the meeting was duly advertised in "The Cape Codder" for two weeks preceding the public hearing. It is noted by the Board written reports, where applicable, of the Building Commissioner are entered into the minutes by reference.

Other Business:

- Minutes of November 27, 2006 were approved as corrected on a Motion by Mr. Efromson, 2nd by Mr. Hultin, (5/0), unanimous.
- Mr. Pope noted they would try to adhere to the meeting schedule provided previously.
- Mr. Efromson asked about procedure on a previous decision which was quite detailed; members explained the process, and said in some cases advice of town counsel is sought.

7:15 P.M. – Continuation – Elizabeth V. Carruthers, Trustee of the Elizabeth V. Carruthers Trust, for property located at 23 Great Hills Road., (Atlas Sheet 53, Parcel 4)(2006-020/ZBA). Applicant is appealing the refusal of the Building Commissioner to issue a building permit and is seeking a Special Permit under Sec. 30.7.A. of the zoning bylaw to extend a pre-existing, non-conforming 4'x10' shed with reference to Sec. 40.1 Table A, Setbacks 25 feet in the zoning bylaw, as per plans filed with the building inspector and the ZBA. as continued from the meeting of November 27, 2006.

Ms. Carruthers and Mr. Pendleton were present to provide more information on the petition including a letter from Cape Associates project manager Robert Creonte stating the shed was built according to plans of Nov. 7, 2001, and was shown on said plan, as well. Building Commissioner Wingard said as far as he knew, the shed was legally built. Mr. Pope explained as it was built, the shed was an intrusion into the setback; however, it appeared former building commissioner Corsano did not take sheds into consideration as structures. Members discussed other possible sites for the shed which would not intrude into the setbacks; Ms. Carruthers explained the current site of the shed was in a sloping area; it wouldn't impact anyone's space; and access in and out of the driveway was important. It was noted the current spot of the shed is a more protected area. Members discussed procedure – the applicants could withdraw their application and reapply for a variance at a different site; the board could vote on the current application. After further discussion, the following Motion was made:

Motion (Pope; 2nd Efromson): Move to approve the Special Permit to extend a pre-existing, non-conforming 4'x10' shed (w/reference to Sec 30.7.A. and Sec. 40.1, Table A, of the zoning bylaw not to exceed a 6x10' expansion toward the southerly property line and not to exceed 7 feet in height. The Board finds said grant is in keeping with the intent of the bylaw and not more detrimental to the neighborhood. Voted in Favor: Althaus, Hultin, Pope, Allee, Efromson; Voted Against: None. Motion Carries 5/Yes; 0/No, Unanimous.

Motion (Pope; 2nd Hultin): Move to uphold the Building Commissioner's decision not to issue a permit because of the setback issue.

Voted in Favor: Althaus, Hultin, Pope, Allee, Efromson; Voted Against: None. Motion Carries 5/Yes; 0/No, Unanimous.

7:30 P.M. – Continuation – Verve Development, LLC, by Russell Braun, agt/mgr, (d/b/a Sunrise Cottages) for property located at 497 Shore Road (Atlas Sheet 7, Parcel 1)(2006-019/ZBA). Applicant is seeking a Special Permit for conversion of a 3-unit cottage colony (Phase 1) to a condominium form of ownership, with reference to Sec. 40.3 of the zoning bylaw, as per plans filed with the ZBA, as continued from the meeting of November 27, 2006.

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Chairman Pope explained since he had asked Building Commissioner Wingard and Assistant Town Administrator Greenhalgh to come to the meeting, he would make the following Motion:

Motion (Pope; 2nd Hultin): Move to reopen the evidentiary portion of the meeting.

Vote: 4/0 Unanimous.

Mr. Pope then asked Atty. Murphy whether there would be a problem with Alternate Allee hearing or voting, since Mr. Conlon was not present and she had been present at the previous meeting. Atty. Murphy said he did not have a problem with that; however he wished to be put on record with objections to Alternate Efromson making a presentation and taking an advocate's position at the previous meeting, rather than acting as a member of a deliberative board and he did not feel this was appropriate. Mr. Pope said this was duly noted for the record.

Atty. Murphy continued with his presentation, noting one of the issues mentioned at the previous meeting was this had not been operated as a cottage colony; he also cited previous examples of phased development, such as Pilgrim Colony Motel, which was partially torn down and also consisted of a phase with 2-3 cottages – the ZBA had granted a Special Permit in their decision of April 2003 – he felt this was clearly a phased development. In the present situation, he said three units are complete and will be rented next summer; this conversion reflects a form of ownership; the use stays as a cottage colony only. Atty. Murphy also cited a 1993 ZBA decision regarding Colonial Village which he said was a phased development cottage colony. He continued, the zoning bylaw does not restrict the size of a cottage, and there is no such thing as a typical cottage in zoning; he added, when the condominium conversion bylaw first was enacted seasonality could be controlled, however zoning could not regulate change of ownership but could control change of use. This project he contended meets the criteria for conversion, and the applicant could come back at a later phase for a special permit. Questions were raised by the ZBA about the off site manager. Answer: this was not under the building department purview; Mr. Braun (manager) lives across the street. It was noted the Board of Health does allow smaller cottage colonies (those with 10 units or less) to have an off-site manager. Ms. Greenhalgh asked how one could “condo” a portion of the property and whether they were “condoning” the land not just the 3 units; she spoke about the condition suggested, that is, a second special permit would be necessary or would there a modification of the phase. Mr. Althaus asked if this were similar to the Whitman House project. Mr. Braun said it was his understanding he would be coming back to the ZBA for the next phase. Mr. Althaus asked about the 9/26/02 town counsel opinion on cottage colonies, and Mr. Efromson said there was confusion on the phased aspect. Mr. Murphy said he was not involved with the site plan review by the Planning Board, but phased development was not under the Planning Board's jurisdiction.

Mr. Pope read a letter from Beach Point residents Ditacchio which objected to the project. Members asked Mr. Wingard about the definition of cottage and story; he said there were no vertical walls other than gable walls. Members discussed the difference between a cottage and a single-family residence (sfr) and noted a cottage was rented to the ‘transient’ public. Mr. Hultin asked about site plan review and if the zba felt any of these items required by the review were not met, whether there would be any purview for the ZBA. It was mentioned the building commissioner has to issue a building permit based on compliance with site plan review; Mr. Hultin asked how does this or a similar plan comply with other site plan references as being compliant with zoning. Atty. Murphy said the problem is, conceptually one cannot convert [to condominiums] until the structure is there (ie: built); he felt there should be an exemption from #24 (Community Impact) of Site Plan Review. Planning Board member Golden said there was extensive discussion prior to a waiver of #24

Ms. Greenhalgh mentioned the requirements of Sec. 40.3 of the zoning bylaw and said of the 4 requirements, site plan is not listed; under zoning, the special permit is to convert to single-family or multi-family use or ownership. Ms. Allee said Beach Point is such an environmentally-sensitive area and this was deplorable. Mr. Braun said this project had been carefully reviewed by the Conservation Commission and he felt it was a very carefully-considered project. Members discussed the project further; Mr. Althaus spoke about interpretation of the language in the bylaw, such as “customary,” “cottage colony,” etc., and he reviewed the “intent of the bylaw,” and past bylaws; he felt it seemed the intent was not to allow the “building” of condominiums, but rather than the “conversion” of cottage colonies. Mr. Althaus continued, although he did feel the applicant went by what was written in the bylaw he would not

go this route in the future, he did not feel this procedure was a part of the intent of the bylaw. Mr. Hultin said he agreed with Mr. Althaus on almost every issue and said the covenant addresses seasonal use; he added there are flaws in the bylaw and a literal reading would result in the interpretation the requirements have been fulfilled; he, too, would be wary of supporting this procedure in the future. Members discussed building cottage colonies, and Mr. Pope noted Town Meeting had voted down the requirement of operating a cottage colony for two to three years prior to conversion. It was also noted various zoning rewrites deleted the words "existing" or "new" in that section of the bylaw.

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Atty. Murphy reiterated, one could not regulate a condominium form of ownership. Mr. Efromson spoke of changes of use in the bylaw section and read the sections including: "...from a motel, etc., into single family use; condominium use," and he spoke about rental to the transient public, and he cited a SJC ruling. After further discussion, the following Motion was made:

Motion (Pope; 2nd Hultin): Move to approve the Special Permit for conversion of a 3-unit cottage colony (Phase 1) to a condominium form of ownership, as per plans filed with the ZBA. The Board notes the Septic System has been approved by the Board of Health; the Covenant has been signed by the appropriate parties. The Board Finds said Special Permit is in keeping with the intent of the bylaw and not substantially more detrimental to the neighborhood. Condition: said permit is for 3 units only; the applicant must return to the ZBA for future phases of Conversion.

Discussion under the Motion: Mr. Pope said they were not lawmakers and he thought the intent of recodification stands; furthermore, Town Meeting has refused to take a stand in this regard. He did not think there was anything to be gained by refusing this. Although they were not happy about this, Mr. Hultin and Mr. Althaus said they would vote in the affirmative.

Voted in Favor: Pope, Hultin, Althaus. Voted Against: Allee, Efromson. 3 in Favor/2 Against. Motion Does Not Carry.

Mr. Pope asked dissenting members to provide findings of fact for their negative vote within 14 days.

Next ZBA Meeting will be Monday, January 22, 2007 at 7 PM at Truro Town Hall.

Meeting adjourned at 9:40 P.M.